

UNITED STATE OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

UNIFIRST CORPORATION

Employer ^{1/}

and

Case 9-RC-17699

TEAMSTERS LOCAL UNION NO. 413, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

Petitioner

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

The Employer, UniFirst Corporation, operates a textile and uniform rental and maintenance facility in Blacklick, Ohio. Its primary line of business is uniform rentals. The Petitioner, Teamsters Local Union No. 413, affiliated with the International Brotherhood of Teamsters, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all drivers and maintenance employees employed by the Employer at its Blacklick, Ohio facility, excluding all production employees, all office and clerical employees and all professional employees, guards and supervisors as defined in the Act.

The parties are in general agreement with respect to the composition of the Unit. However, at the hearing and in their briefs, the parties disagree on the unit placement of the two route sales supervisors, Greg Zabor and Blake Temple. ^{2/} The Petitioner, contrary to the Employer, contends that the route sales supervisors must be excluded from any unit because they are statutory supervisors. Excluding the route sales supervisors, the size of the unit sought by the Petitioner is 14 employees, while the unit size the Employer contends is appropriate, including the route sales supervisors, consists of 16 employees.

I have carefully considered the evidence and the arguments presented by the parties on the issue and I have concluded, as discussed below, that the Petitioner has not met its burden of establishing that the route sales supervisors are statutory supervisors. Accordingly, I have directed an election in a unit of approximately 16 employees, including the route sales supervisors.

^{1/} The Employer's name appears as amended at hearing.

^{2/} The Employer used the titles "district sales supervisor" and "route sales supervisor" to describe the two employees at issue. As the term route sales supervisor was more consistently used during the hearing, I shall refer to them by that title.

An overview of the Employer's operation provides the context for my discussion of the issue of the supervisory status of the route sales supervisors. I will then detail the facts and reasons supporting my conclusions.

I. OVERVIEW OF OPERATIONS

The Employer operates a textile and uniform rental and maintenance facility in Blacklick, Ohio. The approximately 35-40 production employees provide laundry and maintenance services on uniforms and other textiles for customers. Neither party maintains that the production employees should be included in the Unit. Service department route sales representatives deliver clean uniforms and textiles, along with other supplies, to customers, and pick up soiled rental items to return them to the Employer's Blacklick facility for processing. The route sales representatives also collect customer payments, sell additional products, and handle customer problems and complaints.

Two shuttle drivers assigned to the Employer's production department drive semi tractor trailers transporting clean uniforms and textiles to Huntington, West Virginia and Cleveland, Ohio, where the Employer has satellite facilities, and return soiled products to the Blacklick facility for processing. Additionally, the production department includes the two maintenance employees who work on the production equipment and the Employer's trucks.

General Manager Jim Paxson directs all of the Employer's Blacklick operations. Production Manager Gary Fowler supervises the production employees who unload soiled textiles, clean, process and prepare them for loading onto trucks for return to customers.

THE SERVICE DEPARTMENT:

The service department is overseen by District Service Managers (DSMs) Chris Durbin and Aaron Zirsnak, who report directly to Paxson. Generally, the Service Department is responsible for delivering clean rental uniforms, textiles and other products to the Employer's customers, collecting payments from the customers, and returning soiled items to the Employer's facility. The Service Department includes nine route sales representatives, one route sales trainee, two route sales supervisors and a customer service representative.

1. ROUTE SALES REPRESENTATIVES:

Each DSM is responsible for customers in a particular geographic district. These customers are serviced by a route supervisor and four or five route sales representatives. The hours of the route sales representatives vary, depending on their particular route but they all start work in the morning, visit a pre-scheduled number of customers and return to the facility where their trucks are unloaded by production employees. After their return to the facility, the sales representatives work on a computer with a route sales supervisor or a DSM to "cash-in" or balance the customer

sales receipts and credits for the day. The resulting computer printout is given to the DSM.

All Service Department employees, including the route sales supervisors share the same fringe benefits. However, it is unclear from the record whether hourly production employees have the same fringe benefits as the service department employees. Each sales representative is paid a 7 percent commission, with a variable minimum guarantee based on the route they service. They may earn additional bonuses by selling products such as cleaning supplies or paper goods to customers.

The record discloses that at the time of the hearing, Route Sales Trainee Andy Scheiderer, was being trained as a route sales representative by Route Sales Representative Marc Torr. In accord with the stipulation of the parties and based on the record evidence, I find that the route sales trainee shares a community of interest with other unit employees and I will include him in the Unit.

2. MAINTENANCE EMPLOYEES:

The two maintenance employees, Tom Bandum and Roy Moore, report to Fowler. They perform maintenance on the delivery trucks used by the service department employees as well as on production equipment. The parties stipulated and the record reflects that the maintenance employees share a community of interest with the drivers whose trucks they maintain. Accordingly, pursuant to the agreement of the parties and based on the record, I will include them in the Unit.

3. SHUTTLE DRIVERS:

Like the maintenance employees, the two shuttle drivers, Randy Young and Michael Ness, report to Fowler. They are hourly paid and keep a handwritten record of the time they work. Most of their time, like that of the route sales representatives, is spent away from the Employer's facility. Unlike the route sales representatives, however, they do not deal directly with customers, but instead make deliveries to the Employer's satellite facilities. The record shows that Young worked as a route sales representative before becoming a shuttle driver. In accordance with the stipulation of the parties and as the record shows, I find that the shuttle drivers share a community of interest with the maintenance employees and the route sales representatives. Accordingly, I will include them in the Unit found appropriate.

II. SUPERVISORY STATUS OF ROUTE SALES SUPERVISORS

A. Overview of Route Sales Supervisors Position

The route sales supervisors spend approximately 80 percent of their time substituting for absent or vacationing route sales representatives, assisting route sales representatives with the installations at new customers, and performing route audits, which are inventories of the amount of product at customer's facilities. The remainder of their time is spent assisting with cash-ins, making sales calls to customers, and dealing with customer service issues.

In the service department, there are six computers located in three doorless cubicles, two of which are used by the route sales supervisors, while the third cubicle is assigned to the customer service representative. The DSMs, like the General Manager and Production Manager, work in enclosed offices. The service department computers are used by all route sales representatives for cash-ins and other paperwork. The sales representatives apparently have access only to information on their own routes while the route sales supervisors apparently have access to all route information.

Unlike the route sales representatives who wear green and white striped uniform shirts, the route supervisors' uniform is a white shirt with the company logo. Additionally, the route sales supervisors at the direction of the DSM, sometimes wear suits to work when they are required to call on customers.

Unlike the route sales representatives who are paid a different minimum guarantee based on the average sales on their individual routes, the route sales supervisors receive a fixed salary, regardless of the routes they are covering. At least one route sales representative, Jeff Phillips, earns more than the route sales supervisors, and it appears from the record that he transferred from a route sales supervisor position to a sales representative position so he could make more money.

B. ANALYSIS AND RESOLUTION OF SUPERVISORY ISSUES

Before examining the specific duties and authority of the route sales supervisors, I will review the requirements for establishing supervisory status. Section 2(11) of the Act defines the term supervisor as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of supervisor in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend action encouraged by the listed criteria. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000).

The burden of proving supervisory status lies with the party asserting that such status exists. *Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001); *Michigan Masonic Home*, 332 NLRB No. 150, slip op. at 1 (2000). The Board has frequently warned against construing supervisory status too broadly because an individual found to be a supervisor loses the protection of the Act. See, e.g., *Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997). The lack of probative evidence of supervisory status is

construed against the party asserting supervisory status. *Michigan Masonic Home*, supra, slip op. at 1. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory status. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

Possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., *Pepsi-Cola Co.*, 327 NLRB 1062, 1063 (1999); *Fred Meyer Alaska*, 334 NLRB No. 34, slip op. at 4 n. 8 (2001). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See, *Michigan Masonic Home*, supra, slip op. at 3; *Chevron U.S.A.*, 308 NLRB 59, 61 (1992).

With regard to whether the route sales supervisors possess any of the 12 indicia of supervisory status listed in Section 2(11) of the Act, I note that there is no contention by the parties or record evidence that they hire, transfer, discharge, suspend, lay off, recall, discipline ^{3/} reward or transfer employees or effectively recommend such actions. Accordingly, I will address only the Petitioner's arguments that the route sales supervisors are supervisors within the meaning of Section 2(11) of the Act because of their role in directing, assigning, and evaluating route sales representatives and because the Employer has held them out to be supervisors.

In considering whether the route sales supervisors possess the supervisory authority claimed by the Petitioner, I note that in enacting Section 2(11) of the Act, Congress emphasized its intention that only supervisory personnel vested with "genuine management prerogatives" should be considered supervisors, and not "straw bosses, leadmen, set-up men and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). I conclude, for the reasons discussed below, that the route sales representatives are not statutory supervisors but rather are the type of individuals that Congress did not wish to exclude from coverage under the Act.

1. Direction of Work

The record does not support Petitioner's contention that the route sales supervisors exercise independent judgment in responsibly directing the work of the route sales representatives. Thus, the record indicates that the DSMs are responsible for directing the work of the route sales representative in their respective districts. In the absence of a DSM, employees in that district are to seek guidance from the other DSM, not from a route sales supervisor. The route sales representatives are required to "cash-in" their books daily with the route sales supervisor or DSM, balancing sales with amounts received and credits given. The resulting printout is then presented to the DSM for review and approval. In the absence of a DSM, the route sales supervisor can approve a "cash-in," which is submitted to the DSM the next work day. The record

^{3/} In its brief, the Petitioner contends that the route sales supervisors, "will write up potential disciplines if the manager did not personally witness the offense." However, there is no probative evidence in the record to establish that route sales supervisors have the authority to discipline employees or effectively recommend the discipline of employees. Indeed, the only probative evidence in the record is to the contrary.

indicates that all route sales representatives are required to stay until their accounts balance. The route sales supervisors have no authority to release route sales representatives from work before their cash-in is completed or to require them to work overtime by keeping them at work longer than is necessary to complete the check. The record does not indicate that route sales supervisors can independently determine whether credits to a customer are appropriate, or that such credits affect commissions earned by the route sales representatives.

2. Assignment of Work

Contrary to Petitioner's contention, the record shows that the assignment of a sales representative for a "special" run involving forgotten products or extra material needed by a customer is merely routine and does not involve the use of independent judgment. Thus, the route sales representative regularly servicing a particular customer takes the "special run" unless another route sales representative or route sales supervisor happens to be conveniently able to deliver the material as a favor. The route sales supervisor, at most, may request that one route sales representative deliver a special run for another, and there is no evidence that the sales supervisors can order a sales representative to take a "special run."

3. Evaluations

The record shows that the route sales supervisors regularly perform route audits, during which they check to see that the customers are properly stocked with product. The record also shows that the route supervisors do not use independent judgment in performing the audits, but rather the audits are strictly a clerical function in which the route supervisors check the inventory at customers' facilities to see whether it matches the inventory in the Employer's sales records. The audits are reported to the DSM, but the route sales supervisor has no independent authority to resolve or explain discrepancies. Although the record indicates that the route audits might be used to determine promotions or to reassign open routes, they have not yet been used for that purpose. Rather, the DSM uses the audits to determine whether customers are properly being serviced and to improve service. In this absence of evidence that the audits affect employees' terms and conditions of employment or that recommendations affecting employees' terms and conditions of employment accompany the audits, the mere reporting of inventory information in audits by the route sales supervisor is not sufficient to confer supervisory status on them. See, *Highland Superstores, Inc. v. NLRB*, 927 F.2d 918, at 922 (6th Cir. 1991); *Nymed, Inc., d/b/a Ten Broeck Commons*, 320 NLRB 806, at 812 (1996). There is no evidence that the route sales supervisors attend management meetings, recommend promotions, set quotas for employees or take any other action that would suggest they evaluate employees in a manner affecting employees' pay or working conditions. See, *Allegheny Beverage Corp*, 172 NLRB 460 (1968).

4. Route Supervisors Held Out as Supervisors by the Employer:

The designation of employees as route sales supervisors does not, standing alone, make them supervisors within the meaning of Section 2(11) of the Act. It has long been held that it is the independent exercise of the indicia of supervisory authority found in Section 2(11) of the Act that is controlling and not labels or titles -- which have been described as "unimportant" or "irrelevant." *First Western Building Services*, 309 NLRB 591, 603 (1992). See also, *Aztec Bus Lines*, 289 NLRB 1021, 1051 (1988); *Tecom, Inc.*, 277 NLRB 294 fn. 5 (1985); *Columbia Engineers International*, 249 NLRB 1023, fn. 11 (1980).

Moreover, the record does not support Petitioner's claim that the route sales supervisors were held out as supervisors and clothed with ostensible supervisory authority. Unlike the assistant managers found to be supervisors in *Swan Super Cleaners*, 152 NLRB 163 (1965), cited by the Petitioner in its brief, the two route sales supervisors here do not help oversee a department of employees, assign work, move employees, report unsatisfactory work, or substitute for the manager nor are they paid substantially more than rank and file employees. Indeed, the department consists of only 14 or 16 employees, and, as previously noted, at least one unit employee earns more than the route sales supervisors.

Solvay Baking, 176 NLRB 673 (1969), cited by the Petitioner in support of its claim that the route sales supervisors must be supervisors because employees view them as having authority, is inapposite. Indeed, in *Solvay*, the Board made no finding as to the supervisory status of the employees in question. Here, there is no record evidence that the route supervisors were viewed by the route sales representatives as being "in charge." Further, this factor alone is not sufficient to establish that the route sales supervisors are statutory supervisors.

C. CONCLUSION AS TO STATUS OF ROUTE SALES SUPERVISORS

Based on the foregoing, the record as a whole, and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the Petitioner has failed to meet its burden of proving that the route sales supervisors are statutory supervisors. Rather, the route sales supervisors are, at best, merely "straw bosses" who do not exercise any independent judgment with respect to Section 2(11) indicia. See, e.g., *Somerset Welding & Steel Co., Inc.*, 291 NLRB 913, 914 (1988); *Dura-Vent Corporation*, 257 NLRB 430, 431-432 (1981). Although not a primary indicia of supervisory status, I note that if I were to find the route sales supervisors to be supervisors, there would be a ratio of one supervisor for every three service employees, a rather high ratio and a factor which further militates against them being supervisors. Finally, the record shows that the route sales supervisors have frequent contact with route sales representatives, perform the same tasks as the other unit employees, and share the same fringe benefits and working conditions with other employees. Accordingly, I conclude that the route sales supervisors are not supervisors within the meaning of Section 2(11) of the Act, and I have included them in the Unit.

IV. EXCLUSIONS FROM THE UNIT

The parties agree, the record shows, and I find that the following persons are supervisors within the meaning of the Act: Jim Paxson, general manager; Gary Fowler, production manager; and Chris Durbin and Andy Zirsnak, district sales managers. Accordingly, I will exclude them from the Unit.

In further agreement with the stipulation of the parties and as the record shows, I find that Mandy Thomas, the customer service representative, is an office clerical employee. Accordingly, I will exclude her from the Unit.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All route sales representatives, route sales supervisors, route sales trainees, shuttle drivers and maintenance employees employed by the Employer at its Blacklick, Ohio facility, excluding all production employees, the customer service representative, office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local Union No. 413, affiliated with the International Brotherhood of Teamsters. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **October 10, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **October 17, 2002**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 3rd day of October 2002.

/s/ Richard L. Ahearn

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Classification Index

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